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DEPARTMENT OF INFORMATION RESOURCES

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January 21, 1998

Dan Morales
Attorney General
Office of the Attorney General
209 W. 14th Street
Austin, Texas 78701

Re: Request for Opinion

Dear General Morales:

The Department of Information Resources (DIR) respectfully requests your opinion regarding the legal effect of subsections (d) and (e) of Section 551.126, Government Code ("Videoconference Call"), in the circumstances described below.

Background.

The 75th Legislature enacted, and Governor Bush signed into law, Senate Bill 839 regarding open meetings held by videoconference call. This legislation created a new section in the Open Meetings Act (Section 551.126, Government Code), which permits a governmental body to hold meetings by videoconference call if it complies with certain requirements described in that section. Some of those requirements are:

- A quorum of the governmental body must be physically present at one location of the meeting.
- Notice of the meeting must be given in conformity with the notice requirements for other meetings as well as additional notice requirements set forth in that section.
- Meeting notices must specify both the location where the quorum will be physically present and each location where a member of the governmental body who will participate in the meeting will be physically present.
- Each location specified in the notice must be open to the public during the open portions of the meeting.
- Each portion of the meeting that is required to be open to the public must be visible and audible to the public at each location specified in the notice.

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Opinion Committee
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OPEN RECORDS DIVISION

FILE # ML-40101-98
I.D. # 40101

RQ-1098

FILE # OR-114184-98

I.D. # 114184

Since a governmental body may not convene a quorum by means of videoconference call, the use of videoconferencing technology will not permit meetings to occur which would not otherwise have taken place due to lack of a quorum. However, when a quorum is able to convene in one location, videoconferencing technology may permit other members of the governmental body to participate in the meeting from a remote location who might not otherwise have been able to attend. Such technology may also permit some members of the public to attend open meetings at a remote location without having to travel to the primary meeting location.

Questions.

- 1. Since the law requires each remote location to be open to the public, does it also therefore require that the *entire meeting* be recessed or adjourned if some portions of the meeting in the remote location become inaccessible to the public due to technical difficulties?**

It should be remembered that a meeting may not be held by videoconference call unless a quorum of the governmental body has physically convened in one geographic location. There would be no question under ordinary circumstances that a governmental body could continue to meet as long as a quorum was physically present and it complied in all other respects with the Open Meetings Act. However, if a governmental body convened a quorum in one location and also permitted additional members of the body to participate remotely via videoconference, and then ran into technical difficulties that prevented the remote location from exchanging audio and/or video signals with the primary meeting location, the law is less clear. One interpretation of the statute might require the entire meeting to be recessed until the remote location were again made accessible to the public for all portions of the meeting which must be open to the public, or if the technical difficulties could not be resolved in a reasonable period of time, might require the entire meeting to be adjourned.

This would seem to be an absurd result since a quorum of the governmental body must be physically present in one location and presumably could have continued the meeting but for the videoconference call. It also would be a strong disincentive to conducting meetings by videoconference call, because any technical difficulty could easily result in cancellation of the meeting, despite the presence of a quorum and notwithstanding the fact that notice for that location was properly given. Any interpretation of the law that would require a recess or adjournment under such circumstances would appear to be contrary to legislative intent, which DIR understands to be to promote the use of technology to make government more open and accessible to the public, since the effect of that interpretation would most likely be to discourage the use of this technology.

- 2. If an open meeting involving videoconference technology should be recessed or adjourned if some portions of the meeting in a remote location become inaccessible to the public due to technical difficulties, could the problem be**

resolved by providing advance notice to the public of the consequences of such technical difficulties?

It would seem that both the spirit and the letter of the Open Meetings Act would be met if meetings by videoconference call were preceded by notices which, in addition to the requirements of the statute, also contained language substantially similar to the following: *"If technical difficulties should cause the remote location(s) to become no longer open to the public during any portion of the meeting that is required to be open to the public, the remotely-located member of the governing board will be deemed to have left the meeting, and the meeting will continue at the location where the quorum is physically present."* The effect of this approach would be to allow agencies to experiment with videoconferencing technology without fear of having to adjourn in the event of technical problems. It would also have the salutary effect of making government more accessible to the public in remote locations, which is undoubtedly one of the benefits the legislature sought to obtain in passing Senate Bill 839.

Thank you for your consideration of this request.

Sincerely,



C. J. Brandt, Jr.
General Counsel

cc: Carolyn Purcell